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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,768	05/14/2001	Toshiyuki Namba	F-6976	8918

7590

08/19/2003

Jordan and Hamburg
122 East 42nd Street
New York, NY 10168

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/19/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/854,768

Applicant(s)

NAMBA ET AL. *cn*

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 18, 20, 23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 17, 18, 20, 23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____. |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 30 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 30 states that the vertical ribs are parallel to one another. Figures 1, 3-5 and 7 depict vertical ribs that converge towards each other at the lower end of the container. Although the vertical ribs are generally parallel, they should not be stated to be parallel. **This is a new matter rejection.**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites "an upper wall part" in line 2, it can't be determined if this is the upper one of the "at least two circumferential wall parts" as claimed in claim 17 or a different upper wall part.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 18, 23, 25, 26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. (Newman) in view of Sorensen ('350).

Newman discloses a heat-insulating container comprising: a molded container body having a bottom wall (2), a circumferential wall (3) and straight, vertically insulating ribs (10), the circumferential wall being formed by at least two circumferential wall parts (an upper part 13 extending above and adjacent to second shoulder 11 and a lower part 5 extending below and adjacent to second shoulder 11), each having a different diameter, and a circumferential ledge (top surface of second shoulder 11) arranged between the wall parts. Newman discloses the invention except for the downwardly-facing, vertically oriented subsidiary ribs. Sorensen teaches a heat-insulating container having a molded container body having a circumferential wall being formed by at least two circumferential wall parts and a circumferential ledge (22 or 24) arranged between the wall parts and a downwardly-facing, vertically oriented subsidiary rib (skirt-shaped flange 26 or 28, respectively) coupled to the circumferential ledge, the ledge has a downwardly-facing lower edge extending a distance from the ledge, a portion of the rib including the downwardly-facing lower edge is separated from the circumferential wall by a space. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the downwardly-facing, vertically oriented subsidiary rib as motivated by the rigidifying effect and increased thermal insulating effect of forming an effective thermal insulating barrier as taught by Sorensen.

Since Sorensen teaches that the subsidiary rib is annular, circumferential and aligned with the upper wall part as shown by the schematic representation of the cross section of a stack of two containers and since Newman discloses the vertical ribs (10) extending radially outwardly from the outer edge of the circumferential ledge and that the outer edges of the vertical ribs are parallel with the wall parts, the resulting container will be formed with a plurality of subsidiary ribs, each being arranged between adjacent ones of the vertical ribs and having opposite lateral edges coupled to the adjacent ones of the vertical ribs.

Since this is a structure manufactured by molding, the areas where the circumferential, subsidiary rib of Sorensen and the vertical rib of Newman meet or intersect are afforded a certain flexibility in interpretation where these intersecting area can be defined as either part of the circumferential subsidiary rib or part of the vertical rib. These intersecting areas form parts of the vertical ribs of Newman. Therefore, the circumferential rib is sectioned by each vertical rib into a plurality of subsidiary ribs.

For claim 18, wall part (7, 8, 9) is separate from an upper circumferential wall part 13, the wall part (7, 8, 9) has a flange (rim 7), an annular ledge (third annular shoulder 12) arranged between the upper wall part (7, 8, 9) and the circumferential wall (which starts at 13 and extends downwardly), the ledge (12) serves as an indication line.

For claim 25, Sorensen further discloses the upper ledge (22) positioned approximately at 66% of the height of the container from the bottom wall to the upper end of the circumferential wall. It would have been obvious to modify the height of the ledge by design choice in trying to position the ledge where the user's fingers engage the sidewall to provide the maximum insulating effect and rigidifying effect in these critical areas.

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Re claim 29, insofar as one subsidiary rib is arranged between the two abutting vertical ribs (a pair of adjacent vertical ribs) and the subsidiary rib is arranged between the abutting vertical rib on the right side and the vertical rib adjacent to and to the left of the abutting vertical rib on the left side (a second pair of adjacent vertical ribs) and/or the subsidiary rib is arranged between the abutting vertical rib on the left side and the vertical rib adjacent to and to the right of the abutting vertical rib on the right side (a third pair of adjacent vertical ribs), but the subsidiary rib is not between the two most diametrically opposed vertical ribs, the one of the subsidiary ribs is arranged only between some of the pairs of adjacent vertical ribs.

Re claim 30, the ribs are generally parallel insofar as disclosed by applicant's disclosure (see applicant's drawing figures).

Claims 20 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Sorensen as applied to claim 17 above, and further in view of Schwartz, Schad or Chaplin.

For claim 20, the combination of Newman in view of Sorensen discloses a first set of subsidiary ribs extending in a circumferential direction at one height. Sorensen additionally discloses a second circumferential subsidiary rib (28). The combination discloses the invention except for a second set of subsidiary ribs extending in a circumferential direction at a different height than the first set. It would have been obvious to add the second circumferential subsidiary rib for reasons identical to the addition of the first circumferential subsidiary rib.

For claim 27, the combination of Newman in view of Sorensen discloses each of the vertical ribs extends along the outer side of the circumferential wall in a straight line from the upper end downwardly to a height of approximately two-thirds the height of the container. The

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combination discloses the invention except for the vertical ribs extending from the bottom to the upper end.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend the vertical ribs downwardly to the bottom as a matter of design choice in selecting a container that will nest with more separation between the bottoms of adjacent containers in the nested array motivated by a need to store more powder in each container as powder ingredients of a beverage are present in the bottom of each cup or to modify the cup to hold other dry or dehydrated food ingredients such as dehydrated noodles for noodle soup.

Schwartz, Schad and Chaplin each disclose vertical ribs which extend from the bottom to the upper end. It would have been obvious to one having ordinary skill in the art at the time the invention was made to extend the vertical ribs downwardly to the bottom as motivated by the increased wall rigidity and increases thermal insulation taught within these secondary references.

For claim 20, the lengthening of the vertical ribs downwardly will lead to the intersecting of the second circumferential subsidiary rib (28) with each vertical rib. Thus, resulting in the formation of a second set of subsidiary ribs, each separated by a vertical rib, each subsidiary rib of the second set extending in a circumferential direction at a different height than the first set of subsidiary ribs.

Claims 17, 18, 20, 23 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz or Chaplin in view of Sorensen ('350).

Schwartz and Chaplin disclose heat-insulating containers comprising: a molded container body having a bottom wall, a circumferential wall and straight, vertically insulating ribs, the

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circumferential wall being formed by at least two circumferential wall parts (an upper part extending above and adjacent to a ledge and a lower part extending below and adjacent the ledge), each having a different diameter, and a circumferential ledge arranged between the wall parts. Schwartz and Chaplin discloses the invention except for the downwardly-facing, vertically oriented subsidiary ribs. Sorensen teaches a heat-insulating container having a molded container body having a circumferential wall being formed by at least two circumferential wall parts and a circumferential ledge (22 or 24) arranged between the wall parts and a downwardly-facing, vertically oriented subsidiary rib (skirt-shaped flange 26 or 28, respectively) coupled to the circumferential ledge, the ledge has a downwardly-facing lower edge extending a distance from the ledge, a portion of the rib including the downwardly-facing lower edge is separated from the circumferential wall by a space. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the downwardly-facing, vertically oriented subsidiary rib as motivated by the rigidifying effect and increased thermal insulating effect of forming an effective thermal insulating barrier as taught by Sorensen.

Since Sorensen teaches that the subsidiary rib is annular, circumferential and aligned with the upper wall part as shown by the schematic representation of the cross section of a stack of two containers and since Schwartz and Chaplin disclose the vertical ribs extending radially outwardly from the circumferential wall and at least aligned with the outer edge of the circumferential ledge (as shown by Schwartz)(Chaplin discloses that the vertical ribs extend outwardly from the outer edge of the ledge) and that the outer edges of the vertical ribs are parallel with the wall parts, the resulting container will be formed with a plurality of subsidiary

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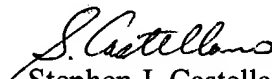
ribs, each being arranged between adjacent ones of the vertical ribs and having opposite lateral edges coupled to the adjacent ones of the vertical ribs.

Since this is a structure manufactured by molding, the areas where the circumferential, subsidiary rib of Sorensen and the vertical rib of Schwartz or Chaplin meet or intersect are afforded a certain flexibility in interpretation where these intersecting area can be defined as either part of the circumferential subsidiary rib or part of the vertical rib. These intersecting areas form parts of the vertical ribs of Schwartz and Chaplin. Therefore, the circumferential rib is sectioned by each vertical rib into a plurality of subsidiary ribs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
August 14, 2003